IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1676 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PIRMOHMAD KARIM MOHMAD PATHAN

Versus

SAYAJI IRON & ENGINEERING CO LTD

Appearance:

1. Special Civil Application No. 1676 of 2000

MR MUKESH H RATHOD for Petitioner No. 1-4

M/S TRIVEDI & GUPTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 17/09/2004

ORAL JUDGEMENT

In this petition, the petitioners have challenged the order dated 2.1.99 passed by the Labour Court, Baroda in Reference No.576/94.

2. Short facts leading to the petition are that the petitioners were employed by the respondent. The services of the petitioners came to be terminated on 18.11.84. The petitioner, therefore, challenged the said

order of the respondent by filing Complaint Nos.136, 120, 114, an 125 of 1984 under section 33-A of the Industrial Disputes Act in pending Reference No.615/84. Since these applications were allowed, the respondent herein challenged the said order of the Industrial Tribunal by filing Special Civil Application No.3562 of 1985. The said Special Civil Application came to be allowed and the Court was pleased to remand the matters to the Industrial Tribunal to rehear the matter on the basis that the termination is penal in nature and deciding the matter after letting the evidence and deciding the legality and justification of the termination order on the basis that such a termination is penal in nature. Accordingly, the matter was remanded to the Industrial Tribunal for the purpose of disposing it of afresh after permitting respective parties to lead evidence in respect of the justifiability of the termination order passed by the employer on the basis that it is penal in nature.

3. It is the case of the petitioners that after the remand, the complaints came to be decided afresh and the Industrial Tribunal by its award dated 20th May 1988 was pleased to reject the applications of the petitioners. The petitioner, therefore challenged the said order of the Industrial Tribunal before this Court by filing writ petition and having failed approached the Hon'ble Supreme Court and the SLP also came to be dismissed.

4. The petitioners thereafter raised separate industrial dispute Nos.576 to 579 of 1994. These references came to be rejected by the Labour Court, by the impugned order dated 2.1.99. The Labour Court was pleased to reject the references on the ground that the same is barred by the law of res judicata in view of the decisions in the earlier round of litigation.

5. Learned advocate for the petitioner has submitted that the earlier orders passed by the Industrial Tribunal were in complaint applications filed by the petitioners and that the decision therein cannot bar a fresh reference at the instance of the petitioners since the orders of the Industrial Tribunal in the earlier round of litigation cannot bind the petitioners. It is suggested that the complaint applications do not partake the character of an industrial dispute and the decision therein cannot act as a res judicata for a full-fledged reference and the adjudication thereon. The learned advocate for the petitioner has relied on a decision of the Hon'ble Supreme Court in the case of Blue Star Employees' Union v. Ex.Off.. Principal Secy. to Govt., AIR 2000 SC 3110 wherein the Hon'ble Supreme Court was

pleased to observe that contravention of the provisions of section 33 of the Industrial Disputes Act is the foundation for exercise of powers by the Tribunal under section 33-A and the decision by the authority without considering the requirement of section 33-A is not a decision on dispute between the parties and cannot operate as res judicata.

6. In Bhavnagar Municipality v. A. Karimbhai, reported in AIR 1977 SC 1229, the Hon'ble Supreme Court was pleased to hold that in a complaint under section 33-A of the Industrial Disputes Act, even if the employer is found have contravened the provisions of section 33, the Tribunal has to pronounce upon the merits of the dispute between the parties. For the purpose of the Act, the complaint under section 33-A takes a form of reference of an industrial dispute by the appropriate authority and the same has to be disposed of in a like manner. In the case of Jaipur I.S.B.V. Bank Ltd. v. Shri Ram Gopal Sharma, AIR 2002 SC 643, the Hon'ble Supreme Court has observed that if approval has been granted under section 33(2)(b) of the Industrial Disputes Act by the authority and if the employee is aggrieved by the said approval, he is entitled to make a complaint under section 33-A of the Act challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of the approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication.

7. In view of the above judicial pronouncements, especially in the facts of the present case, when I find that earlier this Court had remanded the entire issue back to the Industrial Tribunal for consideration of the case on merits, after permitting the parties to lead evidence and deciding the legality and justification of the termination of the order, on the basis that such an order is penal in nature, I do not find any force in the contention of the learned advocate for the petitioner that the decision of the Industrial Tribunal would not operate as res judicata. This Court had made it abundantly clear that the Industrial Tribunal should permit the parties to lead fresh evidence and decide the justifiability of the termination orders passed by the employer. When the Industrial Tribunal decided the questions, at the instance of the petitioners as directed by this Court, the Industrial Tribunal effectively

decided the legality and validity of the termination orders on all counts. Admittedly, the challenge to the orders of the Industrial Tribunal failed before this Court as well as before the Hon'ble Supreme Court.

8. In that view of the matter, it was not open for the petitioners to start a fresh innings and a fresh round of litigation by raising fresh reference before the Labour Court. The issue of legality of the orders of termination of the petitioners having finally decided by all courts, the Labour Court correctly found itself unable to reopen the issues and decide the legality of the termination orders afresh.

9. To conclude, I do not find that the Labour Court committed any illegality in rejecting the reference of the petitioners on the ground of res judicata or any principles analogous thereto.

10. In the result, the petition fails and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)